

REMARKS

1. Summary of the Office Action

In the office action mailed December 26, 2008, the Examiner: (i) rejected claims 1-4, 7, 13-22, and 26-31 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,186,714 (Boudreault); and (ii) rejected claims 5, 8-12, and 24-25 under 35 U.S.C. 103(a) as being unpatentable over Boudreault in view of U.S. Patent No. 4,451,257 (Atckley) and/or U.S. Patent No. 5,100,395 (Rosenberg).

2. Status of the Claims

Applicants have canceled previously pending claims 1-5, 7-22, and 24-31 and added new claims 32-46, of which claims 32, 33, 34, 36, 41, 43 are independent and the remaining claims are dependent.

3. Response to Rejections

As noted above, the Examiner rejected claims 1-4, 7, 13-22, and 26-31 as being anticipated by Boudreault and rejected claims 5, 8-12, and 24-25 as being unpatentable over Boudreault in view of Atckley and/or Rosenberg.

Applicants do not acquiesce in the Examiner's assertions regarding claims 1-5, 7-22, and 24-31. However, Applicants believe that the rejections of claims 1-5, 7-22, and 24-31 are moot in view of the new claims.

Applicants have studied the cited references and find that they do not show or suggest the systems set forth in independent claims 32, 33, 34, 36, 41, 43.

These independent claims recite, in one form or another, a drainage device or system that includes drainage tubing having a generally closed distal end. In contrast, the Boudreault reference discloses a multifunction instrument for use in laparoscopic surgery that includes a rigid hollow tube (i.e., trocar) that has a generally open distal end. As is clear from Figure 1, the trocar does not have a generally closed distal end.

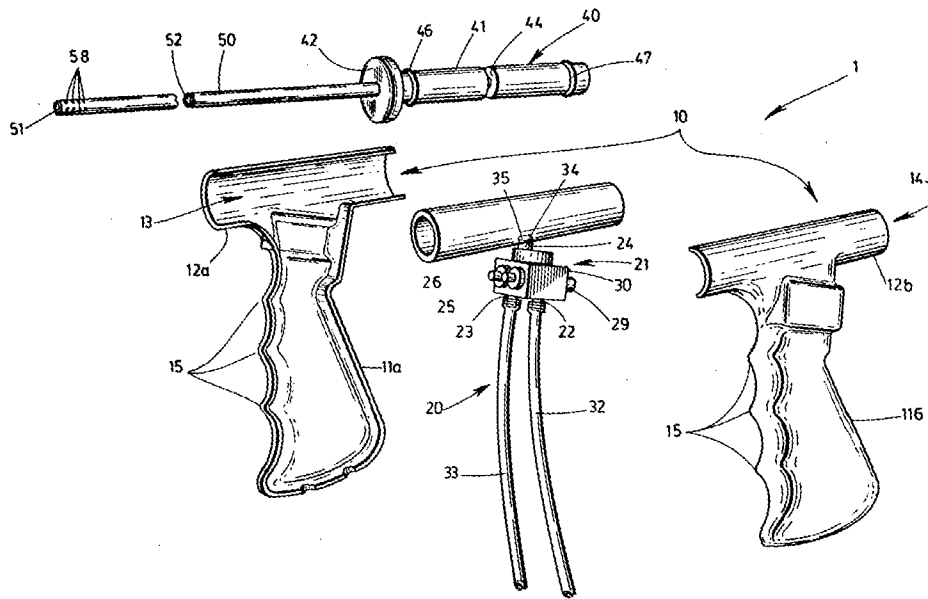


FIG. 1

Rather, the trocar 50 has a generally open distal end. As stated in Boudreault, the trocar 50 which may be up to 5 mm wide “has an open free end 51 distant from the shaft 41.” (Boudreault, column 6, lines 35-36.) Because Boudreault discloses a trocar having a generally open distal end, Boudreault does not disclose the combination of elements recited by any of the independent claims. For at least this reason, Boudreault does not anticipate the independent claims.

Furthermore, independent claims 32, 33, and 36 also require connection to a source of vacuum at very high negative pressure greater than about 300 torr. Applicant submits that if the trocar of Boudreault, which as described above could be up to 5 mm wide, were connected to a source of vacuum at very high negative pressure greater than about 300 torr, the Boudreault instrument would not have a suction force communicated within a body cavity to remove fluid that is insufficient to damage the tissues exposed in the body cavity area in the vicinity of said drainage tubing. Rather, if a vacuum at a very high pressure greater than about 300 torr were connected to a trocar having an open end of about 5 mm wide, the suction force would significantly damage the tissues exposed in the body cavity area in the vicinity of the trocar.

Thus, for at least this reason as well, Boudreault does not anticipate independent claims 32, 33, and 36.

In light of the above remarks, Applicants respectfully submit that independent claims 32, 33, 34, 36, 41, 43 are in condition for allowance.

4. Conclusion

Independent claims 32, 33, 34, 36, 41, 43 are in condition for allowance. The remaining claims are dependent from claims 32, 33, 34, 36, 41, 43 and are allowable for at least the reasons set forth above. For these reasons, Applicant respectfully requests favorable reconsideration and allowance of all of the pending claims. Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-0001.

Respectfully submitted,

McDONNELL BOEHNEN
HULBERT & BERGHOF LLP

Date: June 26, 2009

By: /Scott M. Miller/
Scott M. Miller
Registration No. 62,967